

**Introduced by Senator Wolk  
(Coauthor: Senator DeSaulnier)**

February 22, 2013

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An act to amend Section 85057.5 of the Water Code, relating to the Sacramento-San Joaquin Delta Reform Act of 2009.

LEGISLATIVE COUNSEL'S DIGEST

SB 735, as introduced, Wolk. Sacramento-San Joaquin Delta Reform Act of 2009: covered actions.

The Sacramento-San Joaquin Delta Reform Act of 2009 establishes the Delta Stewardship Council, which is required to develop, adopt, and commence implementation of a comprehensive management plan for the Delta by January 1, 2012. The act requires a state or local public agency that proposes to undertake a covered action to prepare a written certification, as prescribed, as to whether the covered action is consistent with the Delta Plan. The act defines "covered action" to mean a plan, program, or project that meets specified conditions.

This bill would exclude from the definition of "covered action" the approval or implementation of a project which is a part of a larger conservation plan submitted pursuant to the federal Endangered Species Act, a natural community conservation plan submitted pursuant to the Natural Community Conservation Planning Act, or certain permits related to the taking, importation, exportation, or sale of endangered or threatened species issued to specified entities located within certain counties.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 85057.5 of the Water Code is amended to read:

85057.5. (a) “Covered action” means a plan, program, or project as defined pursuant to Section 21065 of the Public Resources Code that meets all of the following conditions:

(1) Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh.

(2) Will be carried out, approved, or funded by the state or a local public agency.

(3) Is covered by one or more provisions of the Delta Plan.

(4) Will have a significant impact on achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta.

(b) “Covered action” does not include any of the following:

(1) A regulatory action of a state agency.

(2) Routine maintenance and operation of the State Water Project or the federal Central Valley Project.

(3) Regional transportation plans prepared pursuant to Section 65080 of the Government Code.

(4) A plan, program, project, or activity within the secondary zone of the Delta that the applicable metropolitan planning organization pursuant to Section 65080 of the Government Code has determined is consistent with either a sustainable communities strategy or an alternative planning strategy that the State Air Resources Board has determined would, if implemented, achieve the greenhouse gas emission reduction targets established by that board pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code. For purposes of this paragraph, “consistent with” means consistent with the use designation, density, building intensity, transportation plan, and applicable policies specified for the area in the sustainable communities strategy or the alternative planning strategy, as applicable, and any infrastructure necessary to support the plan, program, project, or activity.

(5) Routine maintenance and operation of a facility located, in whole or in part, in the Delta, that is owned or operated by a local public agency.

1 (6) A plan, program, project, or activity that occurs, in whole  
2 or in part, in the Delta, if both of the following conditions are met:

3 (A) The plan, program, project, or activity is undertaken by a  
4 local public agency that is located, in whole or in part, in the Delta.

5 (B) Either a notice of determination is filed, pursuant to Section  
6 21152 of the Public Resources Code, for the plan, program, project,  
7 or activity by, or the plan, program, project, or activity is fully  
8 permitted by, September 30, 2009.

9 (7) (A) A project within the secondary zone, as defined pursuant  
10 to Section 29731 of the Public Resources Code as of January 1,  
11 2009, for which a notice of approval or determination pursuant to  
12 Section 21152 of the Public Resources Code has been filed before  
13 the date on which the Delta Plan becomes effective.

14 (B) A project for which a notice of approval or determination  
15 is filed on or after the date on which the final Bay Delta  
16 Conservation Plan becomes effective, and before the date on which  
17 the Delta Plan becomes effective, is not a covered action but shall  
18 be consistent with the Bay Delta Conservation Plan.

19 (C) Subparagraphs (A) and (B) do not apply to either of the  
20 following:

21 (i) A project that is within a Restoration Opportunity Area as  
22 shown in Figure 3.1 of Chapter 3: Draft Conservation Strategy of  
23 the Bay Delta Conservation Plan, August 3, 2009, or as shown in  
24 a final Bay Delta Conservation Plan.

25 (ii) A project that is within the alignment of a conveyance  
26 facility as shown in Figures 1 to 5, inclusive, of the Final Draft  
27 Initial Assessment of Dual Delta Water Conveyance Report, April  
28 23, 2008, and in future revisions of this document by the  
29 department.

30 (8) Leases approved by a special district if all of the following  
31 apply:

32 (A) The uses proposed by the lease are authorized by the  
33 applicable general plan and zoning ordinances of the city where  
34 the special district is located.

35 (B) The uses proposed by the lease are approved by the city  
36 where the special district is located and the city complies with  
37 Chapter 3 (commencing with Section 85225) of Part 3, if  
38 applicable, prior to approval of the lease by the special district.

1 (C) The special district complies with the California  
2 Environmental Quality Act (Division 13 (commencing with Section  
3 21000) of the Public Resources Code) prior to approving the lease.

4 (9) (A) Routine dredging activities that are necessary for  
5 maintenance of facilities operated by a special district.

6 (B) For purposes of this paragraph, “routine dredging activities”  
7 are limited to the following:

8 (i) Dredging to maintain the Stockton Deep Water Ship Channel  
9 at a depth of 40 feet in the sediment trap at the confluence of the  
10 San Joaquin River, between river mile 39.3 to river mile 40.2, and  
11 to maintain the remaining Stockton Deep Water Ship Channel at  
12 a depth of 35 feet plus two feet overdredge from river mile 35 to  
13 river mile 43.

14 (ii) Dredging designed to maintain the Sacramento Deep Water  
15 Ship Channel at a depth of 30 feet plus 2 feet of overdredge from  
16 river mile 0.0 to river mile 30, and at a depth of 35 feet from river  
17 mile 35 to river mile 43.

18 (C) Except as provided by this subdivision, it is the intent of  
19 the Legislature that this exemption shall not be interpreted or  
20 treated as changing or modifying current substantive and procedural  
21 regulations applicable to the decision to approve dredging  
22 operations.

23 *(10) The approval or implementation of (a) a project that is a*  
24 *part of a larger conservation plan submitted pursuant to Section*  
25 *1539 of the federal Endangered Species Act (16 U.S.C. Sec. 1531*  
26 *et seq.), (b) a natural community conservation plan submitted*  
27 *pursuant to the Natural Community Conservation Planning Act*  
28 *(Chapter 10 (commencing with Section 2800) of Division 3 of the*  
29 *Fish and Game Code), or (c) a permit issued pursuant to Section*  
30 *2081 of the Fish and Game Code that is issued to a city, county,*  
31 *special district, or Joint Powers Authority consisting of cities or*  
32 *counties, or both, within the Counties of Contra Costa, Sacramento,*  
33 *San Joaquin, Solano, or Yolo.*

34 (c) For purposes of this section, “special district” means the  
35 Port of Stockton or the Port of West Sacramento.

36 (d) This section shall not be interpreted to authorize the  
37 abrogation of a vested right whether created by statute or by  
38 common law.

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